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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

VALORIE WINN, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

MONDELEZ INTERNATIONAL, INC. and
PAK 'N SAVE, INC.,

Defendants.

Case No: 4:17-cv-2524-HSG

JOINT STATUS REPORT RE *S-L SNACKS* APPEAL

Judge: The Honorable Haywood S. Gilliam

Class Action

1 **I. Summary**

2 While the stay of this case has lasted longer than the parties hoped, the reason for it remains as
 3 strong as ever: a key preemption issue in this case will likely soon be decided by the Ninth Circuit.
 4 Should the Ninth Circuit find the use-of-trans-fat UCL claim in *S-L Snacks* preempted, Plaintiff will
 5 voluntarily dismiss her very similar trans fat use claims, sparing the Court and Defendants from briefing
 6 and resolving the complex preemption question. If the Ninth Circuit rules against preemption, and
 7 possibly other arguments for dismissal also applicable here, Defendants will either be able to focus their
 8 motion to dismiss arguments on issues unique to this case, or decline to file a motion to dismiss. Either
 9 way, a continued stay promotes judicial economy, and with the final case argued and submitted ten
 10 months ago, will probably not extend much longer.

11 **II. Status Report**

12 Pursuant to the Court's July 17, 2018 Order Staying Case Pending Appeals (Dkt. 37) and
 13 October 24, 2018 Order Continuing Stay (Dkt. 39) and October 2, 2019 Order Directing the Parties to
 14 Provide the Court with a Status Update (Dkt. 46), the Parties submit the following Status Report. In its
 15 July 17 order, the Court identified three cases pending before the Ninth Circuit which might address
 16 similar allegations relating to preemption of state-law claims involving partially hydrogenated oil:
 17 *Hawkins v. The Kroger Company*, 9th Cir. No. 16-55532 and *Hawkins v. AdvancePierre Foods, Inc.*, 9th
 18 Cir. No. 16-5669, and *McGee v. S-L Snacks Nat'l, LLC*, 9th Cir. No. 17-55577 (previously captioned
 19 *McGee v. Diamond Foods, Inc.*).

20 On August 10, 2018, the Ninth Circuit issued an unpublished memorandum opinion affirming
 21 the district court's order granting defendant's motion to dismiss in *Hawkins v. AdvancePierre Foods,*
 22 *Inc.*, 733 Fed. App'x 906 (9th Cir. 2018). The opinion expressly declined to reach the preemption issue.

23 On October 4, 2018, the Ninth Circuit issued a published opinion in *Hawkins v. Kroger Co.*, 906
 24 F.3d 763 (2018). The Ninth Circuit held plaintiff Hawkins had standing to pursue her claims relating to
 25 the use of partially hydrogenated oil, and that her consumer fraud trans fat label claims were not
 26 preempted, but expressly declined to reach the issue of state law preemption regarding the use (as
 27 opposed to the labeling) of trans fat/PHO.

1 The Parties believe this final issue relevant to this case will likely be addressed by the Ninth
2 Circuit in the third case, *McGee v. S-L Snacks Nat'l, LLC*, 9th Cir. No. 17-55577, which was argued
3 and submitted on December 5, 2018. For this reason, the Parties suggest a continuance of the present
4 stay until a further status report, to be due either January 10, 2020, or within fourteen days of the
5 decision (or other resolution) of *McGee v. S-L Snacks*.

6
7 DATED: March 15, 2019

Respectfully Submitted,

8 s/ Gregory S. Weston

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[Proposed] Order

Pursuant to the parties' joint position in their status report, it is ordered that the stay of this case be continued until a further joint status report due January 10, 2020, or within 14 days of a decision or other resolution of the appeal *McGee v. S-L Snacks*, whichever is sooner.

DATED: _____, 2019

The Honorable Haywood S. Gilliam, Jr.
United States District Judge